

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: July 14, 2004

Division: Public Works

Bulk Item: Yes X No

Department: Facilities Maintenance

AGENDA ITEM WORDING: Approval of Contract Amendment for Conch Cruisers, Inc.

ITEM BACKGROUND: Approval to apply 1.9% Consumer Price Index (CPI) rent increase to the \$1,162.00 monthly cost for County janitorial services and opening and closing of the public restrooms at Higgs Beach.

PREVIOUS RELEVANT BOCC ACTION: On August 12, 1998, the Board approved a 5-year Lease Agreement with Conch Cruisers, Inc. to operate the Higgs Beach Restaurant/concession. On May 16, 2001, the Board approved to increase rent by \$1,162.00 per month to cover the cost of the County providing janitorial services and opening and closing the public restrooms. On July 15, 2003, the Board approved to renew Lease Agreement for the first of two additional five-year terms commencing August 12, 2003, and ending on August 11, 2008, and to increase the rent to \$5,230.71 in accordance to the CPI of 2.4%. On May 19, 2004, the Board granted approval to increase the monthly rental to \$5,330.09 in accordance to the Consumer Price Index (CPI) of 1.9%.

CONTRACT/AGREEMENT CHANGES: Apply 1.9% CPI increase for County janitorial services of \$1,162.00 mo. + 1.9% = \$1,184.08 + \$5,330.09, for a total monthly rental amount of \$6,514.17 (before sales tax).

STAFF RECOMMENDATIONS: Approval as stated above.

TOTAL COST: Revenue-producing **BUDGETED:** Yes No

COST TO COUNTY: **SOURCE OF FUNDS:**

REVENUE PRODUCING: Yes X No **AMOUNT PER MONTH** \$6,514.17
Year \$78,170.04

APPROVED BY: County Atty OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL:

Dent Pierce, Director Public Works

DOCUMENTATION: Included X To Follow Not Required

DISPOSITION:

AGENDA ITEM # CS

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: Conch Cruisers, Inc Contract #

Effective Date: August 11, 2004

Expiration Date: August 12, 2005

Contract Purpose/Description:
To correct the monthly rental amount to include janitorial services with CPI increase

Contract Manager: Miguel Carbonell 4385 Facilities Maintenance #4
 (Name) (Ext.) (Department/Stop #)

for BOCC meeting on 07/14/04 Agenda Deadline: 06/29/04

CONTRACT COSTS

Total Dollar Value of Contract: \$ Revenue Producing Current Year Portion: \$ N/A

Budgeted? Yes ☐ No ☐ Account Codes:

Grant: \$

County Match: \$

ADDITIONAL COSTS

Estimated Ongoing Costs: \$ /yr For:
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>6/30/04</u>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<u>[Signature]</u>	<u>6/30/04</u>
Risk Management	<u>6/14/04</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>6/14/04</u>
O.M.B./Purchasing	<u>6/14/04</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>6/16/04</u>
County Attorney	<u>6/21/04</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>6/25/04</u>

Comments:

CONTRACT AMENDMENT
Salute Restaurant at Higgs Beach

This Contract Amendment is made and entered into this July 14, 2004, between the COUNTY OF MONROE and Conch Cruisers, Inc. in order to amend the agreement between the parties dated August 12, 1998, as amended May 16, 2001, as amended on July 17, 2002, and Renewal Agreement dated July 15, 2003, and Contract Amendment dated May 19, 2004, copies incorporated hereto for reference, as follows:

1. To correct action of May 19, 2004, to include 1.9% CPI rent increase to the monthly sum of \$1,162.00 per month to cover the cost of the County providing janitorial services and opening and closing the public restrooms at Higgs Beach.
2. Monthly rent, therefore, shall be payable to Monroe County in the amount of \$6,514.17, which shall include both the \$5,330.09 rental fee and the \$1,184.08 maintenance fee.

In all other respects, the original agreement between the parties dated August 12, 1998, as amended May 16, 2001, as amended on July 17, 2002, and Renewal Agreement dated July 15, 2003, and Contract Amendment dated May 19, 2004, remains in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written above.

(Seal)
Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____

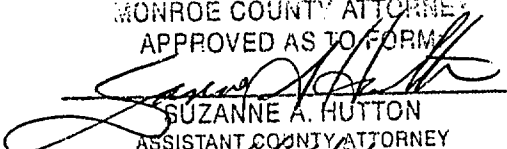
CONCH CRUISERS, INC.

Witness

Witness

By: _____

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM


SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 6/25/04

CONTRACT AMENDMENT
Salute Restaurant at Higgs Beach

This Contract Amendment is made and entered into this May 19, 2004, between the COUNTY OF MONROE and Conch Cruisers, Inc. in order to amend the agreement between the parties dated August 12, 1998, as amended on July 17, 2002, and Renewal Agreement dated July 15, 2003, copies incorporated hereto for reference, as follows:

1. In accordance with Article 2. of the July 15, 2003 Renewal Agreement: "The Lease amount shall increase by the Consumer Price Index (CPI), National Index for Wage Earners and Clerical Workers, and shall be based upon the Annual Average CPI computation from January 1 through December 31 of the previous year. The CPI increase shall be calculated for each additional year for the five-year period.
2. Rent, therefore, payable to Monroe County, shall increase by 1.9% from \$5230. 71 per month to \$5330.09 per month (\$99.38 per month additional).

In all other respects, the original agreement between the parties dated August 12, 1998, as amended on July 17, 2002 and Renewal Agreement dated July 15, 2003, remains in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written above.

(Seal)
Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Deputy Clerk

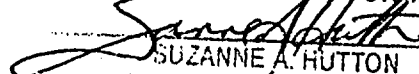
By: _____

Witness

Witness

By: _____

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:


SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
4/20/04

RENEWAL AGREEMENT
(Salute' Restaurant at Higgs Beach)

This Renewal Agreement is made and entered into this July 15, 2003, between the COUNTY OF MONROE and Conch Cruisers, Inc. in order to renew the Lease Agreement between the parties dated August 12, 1998, as amended on July 17, 2002, copies incorporated hereto for reference, as follows:

1. In accordance with Article 1. of the July 17, 2002 Lease Amendment, the Lessee exercises the option to renew the lease for the first of two (2) five-year terms; the first to commence on August 12, 2003, and terminate on August 11, 2008.
2. The Lease amount shall increase by the Consumer Price Index (CPI), National Index for Wage Earners and Clerical Workers, and shall be based upon the Annual Average CPI computation from January 1 through December 31 of the previous year. The CPI increase shall be calculated for each additional year for the five-year period.
3. Rent, therefore, payable to Monroe County shall increase by 2.4% from \$5108.12 per month to \$5230.71 per month.

In all other respects, the original agreement between the parties dated August 12, 1998, remains in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written above.

(Seal)

Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: *Daniel C. DeSantis*

Deputy Clerk

By: *W. J. M. Spehar*

Monroe Gardner
Witness

Conch Cruisers, Inc.

James A. Hutton
Witness

By: *Dawn Parrinello*

Dawn Parrinello, President

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY: *Suzanne A. Hutton*

SUZANNE A. HUTTON

DATE: *6/26/03*

THIRD AMENDMENT TO LEASE AGREEMENT
(Higgs Beach Concession/Restaurant)

THIS LEASE AMENDMENT entered into the _____ day of _____, 2001, by and between the Board of County Commissioners, Monroe County, Florida (Lessor) and Conch Cruisers, Inc., (Lessee).

WHEREAS, the parties did enter into a lease on August 12, 1998; and

WHEREAS, said Lease has been amended twice; and

WHEREAS, said Lease provides in Paragraph 6(a) to open public restrooms from 7 AM to sunset seven days a week year round, including holidays; and

WHEREAS, paragraph 6(c) of the Lease provides for Lessee to provide full janitorial services for the public restrooms including providing all janitorial supplies and paper products; and

WHEREAS, said janitorial services are to be provided on a daily basis to ensure restrooms are clean and sanitary; and

WHEREAS, said Lease makes no separate provision for adjustments or action other than termination of the Lease for breach of covenants under Paragraph 5, which conditions Lessee's possession upon performance and observance of Lessee's covenants; and

WHEREAS, said Paragraph allows the County to maintain the property but does not provide any penalty for Lessee's failure to do so; and

WHEREAS, numerous complaints and bad inspection reports have been generated as a result of Lessee's failure to keep the restrooms open the requisite number of hours and failure to keep the public restroom clean and sanitary; and

WHEREAS, the County deems it necessary to the sanitation of the public restrooms, thereby affecting public health and safety, to clean the restrooms; and

WHEREAS, Lessee is willing to relinquish responsibility for the public restrooms and increase the monthly rental fee to cover the County's cost of assuming such responsibility; now, therefore

IN CONSIDERATION of the promises contained herein, the lease dated August 12, 1998, as previously amended, is hereby amended as follows:

1. Paragraph 1 is amended to read:

This Lease evidences the grants, covenants and agreements made between the parties with reference to the following described premises and as further identified in Exhibit A.

Clarence S. Higgs Memorial Beach, Key West, Florida - including exclusive use of restaurant facilities and storage areas, to have the exclusive right to provide and maintain a full service concession/restaurant such as furnishing food and beach concession at Clarence S. Higgs Memorial Beach and maintain all equipment necessary for the operation of these facilities.

2. Paragraph 4 shall be amended to provide, as of the date of this Agreement, that monthly rent shall be increased by the sum of \$1,162.00 per month to cover the cost of the County providing janitorial services and opening and closing the public restrooms.

3. Paragraph 6(a) shall be amended to delete the second sentence, such that the subparagraph provides only:

To keep open such concession/restaurant Monday through Sunday, including holidays, from 7 AM to 10 PM, and shall not exceed the established beach hours specified in Monroe County Code, Sec. 13.5-3(2)(e).

4. Paragraph 6(c) shall be deleted.

5. The remaining provisions of the original lease agreement between the parties dated August 12, 1998, as previously amended, not inconsistent herewith, remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presence to be executed as of the day and year first above written.

(SEAL)

Attest: DANNY L. KOLHAGE, Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Deputy Clerk

By _____
Mayor/Chairman

Witnesses

CONCH CRUISERS, INC.

By *Dawn M. Parrinello*
Dawn M. Parrinello

Jdleaseconch3

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY *Suzanne A. Hutton*
SUZANNE A. HUTTON
DATE 4/11/01

SECTION THREE
NEGOTIATED LEASE AGREEMENT

THIS lease, entered into on the 12th day of August, 1998, by and between the BOARD OF COUNTY COMMISSIONERS, MONROE COUNTY, FLORIDA (Lessor) and Conch Cruisers, Inc., Sal Parrinello (Lessee), whose address is 1601 Bahama Drive, Key West, Florida, 33040.

The parties to this lease hereby agree to the following:

1. This lease evidences the grants, covenants and agreements made between the parties with reference to the following described premises and as further identified in Exhibit "A".

Clarence S. Higgs Memorial Beach, Key West, Florida - including exclusive use of all existing facilities, restaurant, bath house, and storage areas, to have the exclusive right to provide and maintain a full service concession/restaurant, such as furnish food and beach concession and provide janitorial services to the public rest rooms inclusive of opening and closing and supplying paper products at Clarence S. Higgs Memorial Beach and maintain all equipment necessary for the operation of these facilities.

2. The Lessor hereby grants to the Lessee the exclusive right and privilege of operating and maintaining a full service concession/restaurant at Clarence S. Higgs Memorial Beach, Key West, Monroe County, Florida, for a term of five (5) years, said concession/restaurant to be located at the concrete building now situated upon said beach, and in as is condition. Square footage allocations shall be limited to the interior and enclosed patio area as referenced in Exhibit "A".
3. The Lessee may exercise an option to renew this lease for an additional five (5) years with written consent of the Board of County Commissioners, by giving Lessor written notice of their intention to exercise said option within sixty (60) days previous to the expiration of the original five (5) year term.

- ART. 4. The Lessee, in consideration of the foregoing rights and privileges, does hereby covenant with the Lessor to pay rental fees as follows:

Year one (1): Monthly rent \$4,583.33 (\$55,000.00 per year)

Years two (2) thru five (5): Monthly rent \$4,910.00 (\$58,920.00 per year)

The contract/agreement (lease) amount agreed to herein may be adjusted annually in accordance with change in the Consumer Price Index (CPI), National Index for Wage Earners and Clerical Workers, and shall be based upon the annual average CPI computation from January 1 through December 31 of the previous year.

- A. Upon execution of this lease and prior to the Lessor's delivery of the premises to Lessee, Lessee shall deliver to the Lessor the sum of \$5083.33, for the first month's rent and damage deposit of \$500.00 and an irrevocable letter of credit from a local bank in the amount of \$4,910 for the last month's rent. Lessor shall not be required to post bond securing said advance rent or deposit.

B.

#

The first month's rent, paid in advance, shall be for the month of October, 1998. Rent shall be due on the first day of each and every month thereafter, rent being payable in advance during the term of this lease. Lessee may assume occupancy as of August 13, 1998 for the purpose of coordinating demolition and renovation improvements, conditioned upon his full compliance with all terms of this lease, inclusive of insurance coverage effective as of said date. In addition to the foregoing rental payments, the Lessee covenants and agrees with the Lessor to pay State taxes, if any, and all utility charges, including but not limited to electric, water, sewer, and solid waste at said concession/restaurant, which shall be a result of the operation of the facilities granted under this lease. The Lessor reserves the right to terminate this lease for non-payment of rent by the Lessee for a period of fifteen (15) days or more.

5. In connection with the above demised properties, the Lessor covenants with the Lessee that conditioned on Lessee's performance and observance of Lessee's covenants herein, Lessee shall have quiet enjoyment and peaceable possession of the premises during the term of this lease. In the event the county elects to maintain and/or improve its properties in the vicinity of the leasehold herein, either by necessity, or by choice, such activity will not be considered as a breach of any covenant of this lease.

6. Lessee further covenants and agrees as follows:

- A. To keep open such concession/restaurant Monday-Sunday, including holidays, from 7:00AM-10:00PM, and shall not exceed the established beach hours in as specified in Monroe County Ordinance 13.5-3 (2)(E). Public rest rooms shall be opened at 7:00AM and closed at sunset, Monday-Sunday, including holidays, in accordance with Monroe County Ordinance 13.5-3(2)(C).
- B. To furnish the necessary equipment, furnishing and fixtures needed to operate the concession/restaurant. All moveable equipment and furnishings shall remain the property of the Lessee and may be removed from the premises by Lessee at the termination of this lease agreement, with Lessor's consent. If Lessee fails to remove said moveable equipment or furnishings within ten (10) days after termination of this lease, said items shall then become the property of the Lessor.
- C. Lessee shall provide full janitorial services for the public rest rooms inclusive of providing all janitorial supplies and paper products. Janitorial service frequency shall be on a daily basis to ensure rest rooms are maintained clean and sanitary. Rest rooms are to be inspected during the regular business day to ensure supplies are available and facility is clean and properly sanitized.
- D. Lessee shall maintain a City and County Occupational License during the period of this lease.
- E. Lessee agrees to keep the leased premises in a safe, clean, and well-maintained order at no expense to the Lessor. This provision is to be monitored by the Director of Public Facilities Maintenance or his representative.
- F. Lessee agrees to operate his business in a business-like manner.

7. It is agreed by the parties hereto that Lessee may elect to sub-lease or assign the lease agreement only upon previous written consent of the Board of County Commissioners for Monroe County. The terms of this agreement shall be binding on the heirs, executors, administrators, sub-lessees and assigns of Lessee, which shall not be unreasonably withheld.
8. It is hereby covenanted, stipulated and agreed by and between the parties hereto that there shall, during the said demised term, be no mechanic's liens upon the concession/restaurant or improvements thereto; in case of any attempt to place a mechanic's lien on premises, the Lessee must pay off the same; and that if default in payment thereof shall continue for thirty (30) days after written notice, said Lessor shall have the right and privilege, at its option, to pay off the same or any portion of the same, and the amount so paid, including expenses, shall, at the option of the said Lessor, be so much additional rent due from said Lessee at the next rent due after such payment, with interest at the rate established by the Comptroller under Sec. 55.03, F.S., for the year in which the payment became overdue. Nothing in this paragraph is to be read as a waiver or authorization by the County of its constitutional and statutory immunity and right to have its property free of such liens.
9. Alcoholic beverages may be sold within the enclosed restaurant and patio only, upon acquisition and maintaining proper licenses from local, state, and federal agencies. No carry-out sales of alcoholic beverages is permitted. Sales and consumption of alcoholic beverages must cease by 10:30 P.M.
10. Entertainment may be provided only in the enclosed restaurant and patio area. Any entertainment must be acoustic soft background music and must cease by 10:30 P.M.
11. Lessee shall be responsible for and provide all licenses required by all local, state and federal agencies, including Department of Health.
12. It is expressly covenanted between the parties hereto that the Lessee will not use, suffer nor permit any person to use in any manner whatsoever the said demised property, nor any portion thereof, for purposes calculated to injure the reputation of the premises or of the neighboring property, nor for any purpose or use in violation of the laws of the United States, or of the State of Florida, or of the ordinances of Monroe County, Florida and that the Lessee will keep and save the Lessor forever harmless from any penalty or damage or charges imposed for any violation of any said laws, whether occasioned by neglect of Lessee, and that said Lessee will indemnify and save and keep harmless the Lessor against and from any loss, cost, damage and expense arising out of any accident or other occurrence, causing injury to any person or property whomsoever or whatsoever, and due directly or indirectly to the use of the premises, or any part thereof, by the Lessee.
13. It is further agreed that in no case shall the Lessor herein be liable, under any express or implied covenants in this lease agreement, for any damages whatsoever to the Lessee beyond the rent reserved by the Lease agreement accruing, for the act, or breach of covenant, for which damages may be sought to be recovered against said Lessor, and that in the event said Lessee shall be ousted from the possession of said property by reason of any defect in the title of said Lessor or said Lessor's authority to make this lease agreement, said Lessee shall not be required to pay rent under this lease agreement while

he is so deprived of the possession of said property, and that said Lessor shall not incur any liability of such ouster.

14. It is further mutually covenanted and agreed between the parties hereto that no waiver of a breach of any of the covenants of this lease agreement shall be construed to be a waiver of any succeeding breach of the same covenant.
15. The Lessee hereby covenants and agrees that he, his agents, employees or otherwise shall observe and obey all lawful rules and regulations which may from time to time during the term hereby promulgated and enforced by the Lessor at said beach.
16. The Lessor reserves the right hereunder to enter upon the premises at any reasonable time during normal beach hours for the purpose of inspecting said premises, and the Lessee hereby agrees to keep the premises at all times in a clean and sanitary condition, and not to maintain or keep upon said premises any properties or equipment not used in connection with the operation of said business, unless authorized by the Lessor to do so.
17. The Lessee agrees not to make any major alterations to the building located on said premises, without first obtaining written consent of the Lessor to do so, which will not be unreasonably withheld. Such alterations shall be based on plans approved by the Director of Facilities Maintenance and shall be subject to all City and County Code provisions governing construction. Lessee shall be responsible for obtaining any permits required by any governmental agency.
18. The Lessee shall be responsible for maintaining the structure. The Lessee will keep the premises clean at all times and must meet all requirements for food handling as required by the Monroe County Department of Health. All site improvements shall be pre-approved by the Monroe County Board of County Commissioners.
19. The Lessee shall be responsible for applying and obtaining all permits necessary by all local, state, and federal agencies.
20. Lessee covenants and agrees to indemnify and hold harmless Monroe County Board of County Commissioners from any and all claims for bodily injury (including death), personal injury, and property damage (including property owned by Monroe County) and any other losses, damages, and expenses (including attorney's fees) which arise out of, in connection with, or by reason of the Lessee utilizing the property governed by this lease/rental agreement. The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.
21. All property of any kind that may be on the premises during the continuance of this Lease shall be at the sole risk of the Lessee, the Lessor shall not be liable to the Lessee or any other person for any injury, loss, or damage to property to any person on the premises.

22. In the event that the demised premises, or the major part thereof are destroyed by fire, storm, or any other casualty, the Lessor at its option may forthwith repair the damage to such structure at its own cost and expense. The rental thereon shall cease until the completion of such repairs and the Lessor will immediately refund the pro rata part of any rentals paid in advance by the Lessee prior to such destruction. Should the premises be only partly destroyed, so that the major part thereof is usable by the Lessee, then the rental shall abate to the extent that the injured or damaged part bears to the whole of such premises and such injury or damage shall be restored by the Lessor as speedily as is practicable and upon the completion of such repairs, the full rental shall commence and the Lease shall then continue the balance of the term.
23. All written notices pursuant to this lease shall be forwarded to the following addresses:
- | | |
|-----------------------------------|-------------------------|
| Lessor: | Lessee: |
| Monroe County Public Works | Conch Cruisers, Inc. |
| Facilities Maintenance Department | Sal Parrinello |
| 3583 South Roosevelt Boulevard | 1601 Bahama Drive. |
| Key West, Florida 33040 | Key West, Florida 33040 |
24. If any dispute concerning this lease should arise between the Lessor and Lessee and which results in litigation, the prevailing party shall be entitled to payment of its reasonable attorney's fees and costs associated with said litigation from the losing party.
25. The Lessee will be responsible for all necessary insurance coverage as indicated on the attached forms identified as GIR, GL, WC1, VL, GLLIQ, ARP, and all other requirements found to be in the best interest of Monroe County, as may be imposed by the Monroe County Risk Management Department. All insurance required coverages shall actively be maintained during the lease term.
26. This lease shall be governed by the laws of the State of Florida. Venue for any disputes arising under this agreement shall be in a court of competent jurisdiction in Monroe County, Florida.



WITNESSES WHEREOF, the parties hereto have caused these presents to be executed as of the _____ day of _____, 1998.

Attest: DANNY L. KOLHAGE, CLERK

By: [Signature]

Witness

[Signature]
Witness

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: [Signature]
Mayor/Chairman

(Lessee)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY: [Signature]
SULANNE A. HUTTON

DATE 8/6/98